



RADIOLOGICAL SOCIETY OF CONNECTICUT, INC.
A CHAPTER OF THE AMERICAN COLLEGE OF RADIOLOGISTS

Statement of Marc Glickstein, M.D.
The Radiological Society of Connecticut
In support of Senate Bill 1047
March 2, 2009

Members of the committees:

My name is Marc Glickstein. I am a practicing radiologist here in Connecticut and would like to offer comments on Senate Bill 1047, *An Act Concerning Self-Referral for Imaging Services*. I am representing the views of the Radiological Society of Connecticut on this legislation.

The bill effectively bans a practitioner from seeking reimbursement for a service that he/she did not perform. Around the country, the leasing of time on CT, MRI, and PET scanners is widespread. The scheme goes like this:

- A doctor or doctors' group goes to an imaging center, hospital, or radiologist's office and offers to pay the center a "leasing fee" for use of its staff, space, and scanner.
- The center's staff uses the center's scanner as well as its technical and professional services to supervise, perform and interpret the test.
- The group purchasing the turnkey services bills in its name and retains the profits from the services.

Many, including some prosecutors, view this as a kickback, and for all practical purposes, it is. We submit a copy of an article in the Chicago Tribune that reports on suits filed by the US attorney in Miami and the Illinois Attorney General against these practices.

Dr. Jean Mitchell, a health economist at Georgetown University, has done research showing that this practice is very prevalent and leads to increased numbers of tests done on these scanners. Partly as a result of this research, California passed a law very similar to this bill last year.

Others recognize this as a problem. The Center for Medicare and Medicaid Services (CMS) does not allow Independent Diagnostic Testing Facilities (a specific class of imaging facilities that are not prevalent in Connecticut) to share its space or services with another provider. Other rules banning similar practices by other providers have been proposed.

The Office of Inspector General (OIG) of the United States Department of Health and Human Services has come down hard on the practice of leasing time on a scanner from a provider to whom a doctor ordinarily refers patients. According to a far-reaching Advisory Opinion (AO) 04-17, such arrangements may be considered to be "suspect contractual joint ventures" that equate to "illicit remuneration" or kickbacks - even if each part of the transaction fits squarely within the applicable "safe harbors" under the federal anti-kickback statutes.

President Obama, in his speech to Congress on February 24, indicated that we can no longer tolerate waste and fraud in our health care system. Self-referral in imaging is now universally accepted as leading to excessive increases in utilization of services at a time when the ability of private and public payors to sustain further meteoric growth is unlikely. The practice of leasing time on the scanners of those who really do provide the service is addressed in this bill. If it becomes law, this bill will prevent physicians from profiting from services that they have neither traditionally provided nor been trained to provide, not to mention profiting from services that are actually provided by others.

Lastly, many of the provisions in federal statute apply only to patients with government insurance. The CMS rules also apply to these patients and also to only certain classes of providers in certain situations. The provisions in SB 1047 will protect all the patients in Connecticut, whether they are Federal or State beneficiaries, pay out of pocket, or have private insurance.

Admittedly, the practice of leasing time is not widespread in Connecticut. But it is beginning to make an appearance. As mentioned above, this is growing around the country, and we urge passage of this bill, similar to that in California, so we can continue to provide access to high quality and HONEST, cost-effective medical imaging to Connecticut's citizens. The clarity of its provisions will leave no doubt as to the intent of the law or the inappropriateness of these arrangements.

The above said, there are two technical changes that we suggest for the bill. First, since some hospitals (Bridgeport, St. Mary's, and possibly others) use the facilities of a radiologist-hospital joint venture or of another entity to provide imaging services for inpatients, this provision should only apply to outpatients. Thus, it should read: "Radiological facilities or imaging centers performing the technical component of computerized axial tomography, positron emission tomography or magnetic resonance imaging diagnostic imaging services shall directly bill either the patient or the responsible third-party payor for such services. Radiological facilities or imaging centers shall not bill a practitioner of the healing arts who requests such services. The provisions in section b shall not apply to contracted services by a hospital for its inpatients or patients in its emergency department."

Second, in Connecticut, the terms "Radiological facilities or imaging centers" in section b of the bill are somewhat ambiguous. We suggest substituting the term "Providers of medical imaging services" or adding "or doctors or institutions providing imaging services" to the existing specified entities.

Thank you for this opportunity to weigh in on this important issue.